Bail slip

The Appellants herein/Accused viz, Poovarangasamy,. Ponnvel were directed to eb released on bail as per order of this Hon'ble Court dated 11.6.2001 in Crl.M.P.No 3050/2002 in C.A.No. 453/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.453 of 2001

1.R.Poovaragasamy
2.Ponnvel .. Appellants/A1 & A2

Vs.

State rep by
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
Crime No.6/AC/Special/91,
Salem. .. Respondent/Complainant

Prayer:- This appeal has been preferred against the judgment dated 30.4.2001 made in Special C.C.No.54 of 1992 on the file of the Special Judge-cum-Ist additional District and Sessions Judge-Cum-Chief Judicial Magistrate, Salem.

For Appellants :Mr.D.Shivakumaran (for A1)
Mr.K.Jayaraman (for A2)

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For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred by A1 & A2 in Special C.C.No.54 of 1992 on the file of the Special Judge-cum-Ist additional District and Sessions

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Judge-Cum-Chief Judicial Magistrate, Salem.

2.The short facts of the prosecution case is that A1 being a panchayat Union Additional Regional Development Officer and A2 being an Accountant in the Panchayat Union office at Vazhapadi Union, have demanded a sum of Rs.1,990/- from P.W.3 on 8.3.1991 as an illegal gratification for passing the cheque to the tune of Rs.26,937/- being the balance amount payable to P.W.3 for the work of construction of a building in Muthampatti panchayat office and received the said amount on 8.3.1991 from P.W.3, which attracts an offence under Section 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

3.On appearance of the accused copies under Section 207 of Cr.P.C., were furnished to the accused and charge under Section 7 & 13(1)(d) r/w 13 (2) of the Prevention of Corruption Act was framed against the accused and when questioned, the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.11 were examined and Ex.P.1 to Ex.P.23 were exhibited and M.O.1 to M.O.14 were marked.

4.P.W.1 is the then Rural Development Commissioner, Chennai, during the relevant period. According to him, A1 was working as an Additional Block Development Officer, Vazhapadi Panchayat Union and A2 was working as an Assistant in the same panchayat and that he had received a letter from the Directorate of Vigilance and Anti Corruption Department, Chennai, dated 16.17.19991, which was placed before him on 14.11.1991 along with relevant documents, and after perusing those records and after getting himself satisfied regarding the prima facie case has been made out against the accused, he had issued sanction for prosecution against A1. Ex.P.1 is the order of sanction for prosecution issued by him against A1 on 9.12.1991.

5.P.W.2 is the then Collector of Salem. According to him, he had received a letter dated 16.7.1991 from the Directorate of Vigilance and Anti Corruption Department, requesting him to issue sanction order for prosecution against A2 and that he carefully perused the records sent by the Vigilance and Anti Corruption Department and after getting himself satisfied regarding the prima facie case made out against A2, who was working as an accountant in the Vazhapadi Punchayat Union at that time, accorded sanction for prosecution against A2 on 31.7.1991.

6.P.W.3-Annamalai is the then President of Vazhapadi Panchayat Union. He had also taken contract work during the relevant period and that he had acquaintance with Block Development Officer and that on 1.3.1991 building was constructed by him under Jawahar Rojana scheme and the said building was opened by the District Collector on 1.3.1991 and the estimated value of the building was Rs.65,000/- and the estimate was prepared by the Block Development Officer and and Engineer and that a sum of Rs.18,000/- was sanctioned to him for the purchase of cement and iron roads in the first instalment. But since both the cement and iron rods were supplied by the

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Government they have deducted the said amount of Rs.18,000/- from his bill and the balance of Rs.35,000/- was due to him and after deducting the above said Rs.18,000/- towards the value of the cement and iron rods a sum of Rs.26,000/- remained to be paid by the Panchyat Union. In that connection on 26.3.1991 he met BDO (A1), who in turn had directed him to meet the accountant (A2), who had demanded Rs.1,250/- to BDO and Rs.740/- to him (Accountant-A2) as a bribe to pass the said bill. A2 had demanded totally Rs.1,990/-. Since P.W.2 was not inclined to give the said bribe amount of Rs.1,990/- to the accused, on 8.3.1991 he along with his son P.W.5-Santhappan went to the Vigilance and Anti Corruption Office, Salem, and informed about the demand of bribe by A1 and A2 to the DSP-Krishnasamy, who had directed a Head Constable to write the compliant as narrated by him. Ex.P.3 is the compliant preferred by him. The Vigilance Officials have brought two government officials viz.Chokalingam and Gokulan to whom Ex.P.3-complaint was handed over and the DSP had asked them to read Ex.P.3, after introducing him to them and vice-versa. He had handed over Rs.1,990/- to DSP-Krishnasamy, who in turn had asked the witnesses Chokalingam & Gokulan to count the same and he prepared a solution in a tumbler and asked witness Chokalingam to dip his fingers in it, when he did so, there was no change in the colour occurred and that thereafter, he had sprinkled a power on the currency notes handed over by him (P.W.3) and then asked the witness Chokalingam to count the currency notes. After he did so, he was asked to dip his finger in the said solution, when he dipped his finger in the solution, the colour of the solution became pink. Ex.P.4-mahazar was prepared for the demonstration conducted by the DSP-Krishnasamy in his office and after returning the decoy amount to him (P.W.3), DSP-Krishnasamy had instructed him to hand over the amount to the accused on demand and after receiving the amount he should come out of the office and give a signal to the police who are waiting out side the office of the accused by combing his head with hands. He along with the witnesses Santhappan and Chokalingam left the vigilance office in a police jeep on the same day at 11.00 am and the jeep was stopped near the railway gate, at Muthampatti, and the DSP-Krishnasamy had asked him, Sathappan & Chokalingam to get down from the jeep and instructed to go to the office of the accused and hand over the decoy amount on demand. P.W.3 would further depose that the distance between Muthampatti railway gate, where they got down from the jeep, and the office of the accused is about ¾ Km away and while he and the witnesses were proceeding towards the office of the accused, the other police officials followed them at a distance and that at about 12.00 noon, he, Sathappan & Chokalingam reached the Panchayat Union Office and met the Accountant-A2, who after ascertaining that P.W.3 has brought the amount demanded by him, instructed him to go and meet BDO (A1), who was sitting in the adjacent room of A2. When he met A1, he also ascertained whether he (P.W.3) had brought the amount as required by him, after answering in the affirmative, he came out of the the room of A1 and met A2, who had asked him to wait outside the office since RDO and DDO were present in the office and that he along with the other witnesses waited outside the office till 6.00 pm. After RDO & DDO left the office at about 6.00 pm, A2

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called him and had requested to bring the rubber stamp of the panchayat board standing in his name, to his house at about 9.00 pm. As instructed, he brought the rubber stamp of the panchayat union and went to A2's house at about 9.00 pm, which is situated within the campus of A2's office. At that time when he and other witnesses Santhappan and Chokalingam reached the house of A2, A2 demanded the amount and that he handed over Rs.1,990/- along with the rubber stamp. After taking Rs.740/- towards his share, A2 took the balance amount Rs.1,250/- along with the seal and again went to BDO's office to see A1. At that time, when he entered into the room of A1, A2 asked Sathappan(P.W.5) to accompany him and asked him (P.W.3) to wait outside the room. After a while, P.W.5 came out of the office room of A1 and informed him that A1 had signed in the cheque book and asked him (P.W.3) to receive the cheque. Immediately, he went outside the office of A1 and signaled as instructed by DSP-Krishnasamy in the Vigilance Office, by combing his hair with hands. Immediately, the officials of the Vigilance and Anti Corruption Department entered into the office of A1, to whom he had identified A1 & A2, and also he handed over the cheque to them and P.W.5 also handed over the seal to him (P.W.3) and the Vigilance and Anti Corruption officials have also seized the seal from him under a mahazar. In the chief-examination P.W.3 had stated that on 26.3.1991 he had seen A1 and that the demand was made by A2 on 26.3.1991. But by way of putting a leading question the Assistant Public Prosecutor after getting permission from the Court has ascertained from P.W.3 that the demand was made only on 6.3.1991 and non on 26.3.1991.

7.P.W.4-Chokalingam is the Assistant Director of Geo Technical Centre, Dindigal. According to him, during the relevant period he was working in the same department at Salem and that he knows P.W.3-Annamalai and on 8.3.1991 he went to Vigilance and Anti Corruption office at Salem, as per the requisition made by the DSP-Krishnasamy and other witness Gokulan was also present there and that DSP-Krishnasamy handed over Ex.P.3-complaint preferred by P.W.3-Annamalai and asked both of them to read the same after introducing Annamalai (P.W.3) to him and P.W.3 has also handed over Rs.1,990/- being the decoy amount to the DSP-Krishnasamy, who in turn had asked him to count the same. Thereafter, DSP-Krishnasamy had prepared a Sodium Carbonate solution in a glass tumbler and asked him (P.W.4) to dip his finger in it, when he did so, there was no change of colour in the solution. Thereafter, DSP-Krishnasamy had sprinkled the phenolphthalein power over the currency notes handed over by P.W.3-Annamalai and then asked him (P.W.3) to count the same, the DSP-Krishnasamy had instructed him to dip his finger in the sodium carbonate solution, when he did so, the colour of the solution turned into pink. After assigning letter S-1 to the bottle containing the solution, DSP-Krishnasamy has prepared a mahazar. M.O.2 is the said bottle containing the pink coloured sodium carbonate solution. Thereafter, DSP-Krishnasamy had handed over the decoy amount which was sprinkled with Phenolphthalein powder to P.W.3-Annamalai, directing him to handover the same only on demand to the accused. M.O.3 is the bottle containing the sodium carbonate solution which was marked as 'A', and M.O.4 is the cover containing the Phenolphthalein powder which

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was marked as 'B', which were seized under Ex.P.4-mahazar. DSP-Krishnasamy has also instructed him (P.W.4) to accompany P.W.3-Annamalai and that he accompanied Annamalai and other witnesses in a jeep and got down at railway gate Muthampatti and that they reached BDO's office at about 12.30 pm and met A2, who had enquired P.W.3-Annamalai whether he had brought the amount required by him and after ascertaining the same he had instructed P.W.3 to meet A1-BDO, who was sitting in the adjacent room, who also had enquired P.W.3 whether he had brought the amount required by him and after ascertaining that P.W.3 had brought the amount, he instructed P.W.3-Annamalai to hand over the amount to A2 and to receive the cheque. As per the instructions of A2, he and other witnesses waited in the BDO office till 8.00 pm. Thereafter P.W.3 went to his house to bring his seal and went to A2's house along with the other witness, which is situated within the campus of the office of BDO at about 9.30 pm, P.W.3 brought the seal from his house and he (P.W.3) handed over Rs.1,990/- to A2 as demanded by A2. After affixing the seal in the cheque leaf and after taking Rs.740/- from Rs.1,990/- handed over by P.W.2 and keeping the same on the table, with the balance amount, cheque book and seal, A2 went inside the office room of A1 after asking Annamalai(P.W.3) and him(P.W.4) to wait outside. A2 took P.W.5-Sathappan along with him to the office room of A1 and after a while P.W.5-Sathappan came out of the office room of A1 and informed P.W.3 and other witness that A1 had received the bribe amount and also signed in the cheque and requested P.W.3 to receive the cheque from A2. After hearing this, P.W.3-Annamalai had signaled the DSP-Krishnasamy and other police officials who were waiting outside the office of A1. Immediately DSP-Krishnasamy entered into the office of A1 along with other police officials and witnesses. After introducing himself to A1 & A2, a sodium carbonate solution was prepared in a glass tumbler in which DSP-Krishnasamy had asked A1 to dip his fingers, when A1 did so, the colour of the solution turned into pink. After collecting the solution in two bottles, the DSP-Krishnasamy has assigned S-2 & S-3 marks to the said bottles. They are M.O.5 & M.O.6 respectively. When the DSP-Krishnasamy asked A2 about the amount received by him, A2 informed that the amount is in his house. Thereafter, the sodium carbonate solution was prepared in two bottles by the DSP-Krishnasamy and he asked A1 to dip his fingers in it, when he did so, both the solution turned pink in colour, which were collected in two bottles and sealed. They are M.O.7 & M.O.8 respectively. The solution in which the right hand fingers of A1 were dipped was marked as S4 and the solution in which A1 had dipped his left hand fingers was marked as S5 by the DSP-Krishnasamy. When the DSP-Krishnasamy asked about the bribe amount to A1, he took out the same from his pant pocket and produced. The numbers in the currency notes were tallied with the numbers mentioned in the mahazar prepared in the Vigilance office, A1 had separately placed Rs.50/- in the drawer n a zip bag out of the bribe amount received. The DSP-Krishnasamy has also recovered the pant and the zip bag from which Rs.50/- was taken out by A1 and the total sum seized was Rs.1250/-. M.O.10 is the pant. The DSP-Krishnasamy has also prepared another sodium carbonate solution and dipped the pocket of the pant recovered from A1, the colour of the solution turned pink. The said

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solution was collected in a bottle and assigned the mark S6 on it. M.O.1 is the said bottle containing the solution. When the DSP-Krishnasamy enquired A2 about the mode under which he brought the bribe amount to the room of A1, A2 informed that he wrapped the amount in a kerchief and brought the same to the office of A1. DSP-Krishnasamy seized the said kerchief and also conducted a sodium carbonate test, when the kerchief was dipped in the sodium carbonate solution, the solution turned pink in colour. M.O.13 is the said kerchief. M.O.12 is the said sodium carbonate solution. Ex.P.5 is the file relating to the P.W.3's contract No.671/90 of Vazhapadi Panchayat Union. Ex.P.6 is the voucher No.87/90. Ex.P.7 is the second voucher No.290/90. Both the documents were seized by the DSP-Krishnasamy. Measurement book relating to P.W.3's contract is Ex.P.8. Ex.P.9 is the cheque book, which contained the cheque drawn in favour of Annamalai by A1 after receiving the bribe amount. Ex.P.10 is the cheque leaf bearing No.534700 in Ex.P.9-cheque book. Ex.P.11 is the cash book and Ex.P.12 is the attendance register, in which he (P.W.4) has signed. DSP-Krishnasamy has arrested A1 & A2 and took A2 to his house from where from the table a sum of Rs.740/- was seized by the DSP. The numbers in the currency notes were also verified with the numbers in the mahazar prepared at the Vigilance and Anti Corruption Office and found tallied. A mahazar Ex.P.13 was prepared in which P.W.4 has signed. M.O.14 is the seal of the Muthampatti Panchayat. M.O.14 was recovered under Ex.P.14-mahazar. Afterwards, he returned along with the other witnesses and other police officials to the Vigilance and Anti Corruption Office at Salem on 9.3.1991 at about 9.00 am.

8.P.W.5 is the son of P.W.3, who had also accompanied P.W.3 to the office of A1 and A2 on the date of occurrence. He would corroborate the evidence of P.W.3, his father. According to him, the contract work taken by P.W.3, his father, was carried out only by him and that the Panchyat Union building was completed within three months from the date of contract and the building was opened by the District Collector and a bill for Rs.26,000/- was due to P.W.3 in this regard and that on 6.3.1991 his father P.W.3 went to BDO's office and enquired about the passing of the bill for Rs.26,000/-, but he (P.W.3) returned and informed him (P.W.5) that for passing the said bill the accused were demanding Rs.1,990/- towards bribe. Since he is not inclined to give any bribe amount he took his father to the Vigilance and Anti Corruption office on 8.3.1991 at about 7.00 am and that his father P.W.3 has preferred a complaint to the Superintendent of Police. He would also depose about the arrival of two witnesses viz. Chokalingam and Gokulan and also about the demonstration of sodium carbonate and Phenolphthalein tests conducted by the DSP-Krishnasamy. He would further corroborate the evidence of P.W.3 & P.W.4 relating to the trap conducted in the office of A1 and also in the house of A2 after receiving the bribe amount of Rs.1250/- and Rs.740/- respectively. According to him, the bribe amount Rs.1,250/- was paid by the A2 to A1 in his (P.W.5) presence in the office room of A1.

9.P.W.6 is the Engineer in Vazhapadi Panchayat Union. He has produced

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Ex.P.5 to Ex.P.8 records which were maintained in his office. Ex.P.5 is the file relating to the building contract taken by P.W.3-Annamalai. According to him, as per Ex.P.16 a sum of Rs.26,937/- was due to P.W.3 in connection with the said contract.

10.P.W.7 is the Junior Assistant, who had maintained Ex.P.5-file. He would also corroborate the evidence of P.W.6 to the effect that a sum of Rs.26,937/- was due to P.W.3 under the said contract.

11.P.W.8 is the then Regional Development Officer of Salem Region. He had produced Ex.P.17 office notes to show that on 8.3.1991 A1 was working as BDO, Vazhapadi Panchayat Union.

12.P.W.9 is the then Head Clerk of Chief Judicial Magistrate Court, Salem. According to him, as per Ex.P.18-letter of requisition by the DSP, Vigilance and Anti Corruption Department, the material objects connected with this case were sent for chemical analysis through Ex.P.19-letter of requisition from the Court. Ex.P.20 is the chemical analyst's report.

13.P.W.10 is the then DSP of the Vigilance and Anti Corruption Department, Salem. He had registered the compliant preferred by P.W.3 under Cr.No.117/98. Ex.P.21 is the FIR. He had secured independent witnesses viz.Chokalingam and Gokulan from the Tamil Nadu Housing Board at Salem and Statistics Department respectively. After demonstrating the importance of sodium carbonate and phenolphthalein tests and after preparing mahazar Ex.P.4, he had sent P.W.3, Sathappan (P.W.5) and Chokalingam (P.W.4) and another witness Gokulan and the team of officials in a jeep to the office of A1 & A2 and that P.W.3, P.W.5-Sathappan and P.W.4-Chokalingam alighted at Muthampatti railway gate from the jeep and they proceeded to the office of A1 & A2, and that he and other officials and other witness Gokulan followed them to the BDO's office and waited outside the office expecting the signal from decoy witness. He would also depose that the numbers of the currency notes of Rs.1,250/- recovered from A1 and the numbers of the currency notes of Rs.740/- recovered from A2 tallied with the numbers of the currency notes noted in Ex.P.4-mahazar prepared at his office. He also speaks about the sodium carbonate and phenolphthalein tests conducted during the trap and that A1 & A2 dipped their fingers in the sodium carbonate solution and the colour of the solution turned pink. The kerchief used by A2 and the pant seized from A1 were, when subjected to phenolphthalein test also answered positive for the test.

14.P.W.11 is the Investigating Officer, who had examined the witnesses and recorded their statements and after following the formalities, had laid the charge sheet against the accused under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

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15.When the incriminating circumstances were put to the accused they denied their complicity with the crime. D.W.1 & DW.2 were examined on the side of the accused and no documents produced on the side of the accused. The defence taken by the accused at 313 stage was that A2 had borrowed Rs.1,200/- from A1 and on 8.3.1991 at about 10.30 pm A2, according to A1, had returned the hand loan of Rs.1,200/- and at that time the Vigilance and Anti Corruption Police have caught hold of him. According to A2, P.W.5-Sathappan is known to him and he had borrowed Rs.1,500/- from him on 13.4.1990 but he has not repaid the said loan inspite of his repeated demands and during the first week of March-1991 he met P.W.5-Sathappan in his house and requested him to repay the loan amount immediately and at that time Sathappan's second wife, who is working in the police department, interfered and there arose a quarrel and he (P.W.3) also criminally intimidated him and took a vow to take vengeance against him and on 8.3.1991 at about 10.00 pm P.W.5-Sathappan came to his house and tendered Rs.1,990/50 being the amount due towards principal and interest for Rs.1,200/- borrowed as a hand loan by Sathappan. D.W.1 is the wife of A2 and D.W.2 is A1. They also deposed in accordacne with the statement filed at the time when the incriminating circumstances were put to them under Section 313 of Cr.P.C.

16.Now the point for determination in this appeal is whether the charge under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1998 has been made out to warrant conviction, or the findings of the learned trial Judge in Special C.C.No.54 of 1992 on the file of the Special Judge-cum-Ist additional District and Sessions Judge-Cum-Chief Judicial Magistrate, Salem, is liable to be set aside for the reasons stated in the memorandum of appeal?

17.The Point:- 17(a)The learned counsel appearing for A2 Mr.K.Jayaraman and the learned counsel appearing for A1 Mr.D.Shivakumaran would point out some of the discrepancies in the evidence of P.W.1 and would contend that the demand of bribe amount and the receipt of the same will not be true and not as alleged by the prosecution. The learned counsel Mr.D.Sivakumaran focused the attention of this Court to the evidence of P.W.3-Annamalai, the complainant, and contended that according to P.W.3, the demand of Rs.1,990/- for passing his bill for Rs.26,000/- by A1 & A2 was made on 26.3.1991 whereas in the complaint Ex.P.3, date of demand of bribe amount of Rs.1,990/- by A1 &A2 was on 6.3.1991. Even though in the chief examination P.W.3 has stated at one place as the demand was made by the accused on 26.3.1991, at the fag end of his chief examination the mistake was clarified by the Public Prosecutor by putting a leading question with the permission of the Court to the effect that the demand was made by A1 & A2 only on 6.3.1991 when he met them on 6.3.1991. Further the complaint under Ex.P.3 was also preferred by P.W.3-Annamalai on 8.3.1991 itself. Under such circumstances, it cannot be said that the demand of bribe amount of Rs.1,990/- for passing a bill in favour of P.W.3 for a sum of Rs.26,000/- was made on 26.3.1991.

17(b)Yet another flaw, according to the learned counsel for A1

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Mr.D.Shivakumaran is that as per the instructions of P.W.10, the decoy amount was handed over to P.W.3 with an instruction that on demand by the accused he shall hand over the same to them and then to give a signal to the Vigilance and Anti Corruption Officials, who were waiting out side the office of A1 and A2, but according to P.W.3 after the demand was made by A2, the amount was handed over by P.W.5, the son of P.W.3, which will vitiate the entire trap conducted by the prosecution. P.W.5 is none other than the son of P.W.3. After the demand made by A1, P.W.3 in his chief-examination has stated that the decoy amount was handed over by him (P.W.3). But in the cross-examination he would admit that after the demand his son P.W.5 gave the decoy amount to A2. He would further depose that he is not present at the time when A1 had received the bribe amount. It is not in dispute that the amount recovered from A1 & A2 are the decoy amount and in my view it is immaterial whether the bribe amount after the demand was handed over either by the father P.W.3 or son P.W.5 to the accused. But the phenolphthalein test conducted after the trap as evidenced by P.W.4 and P.W.10 will go to show that both the accused have received the decoy amount. Even though P.W.3 was not present at the time when A2 had handed over Rs.1,250/- the bribe amount demanded by A1 to A1, P.W.5 was present in the office room of A1 and only in his presence A2 has handed over the bribe amount of Rs.1,250/- to A1 and immediately P.W.5 came out of the room of A1 and informed the same to his father P.W.3 that A1 had agreed to sign in the cheque for the amount due to P.W.3. Thereafter as instructed by P.W.10 signal was given by P.w.3 and immediately P.W.10 along with his team rushed to the office room of A1 and recovered the bribe amount of Rs.1,250/- from A1.

17(c)The learned counsel for A1 Mr.D.Shivakumaran would attack the test conducted by P.W.10 was not proper on the ground that even according to the prosecution, the sum of Rs.50/- was recovered from a zip bag, but the said zip bag was not subjected to phenolphthalein test even though the pant pocket from which Rs.1,200/- was recovered was subjected to phenolphthalein test. Even though the zip bag was not subjected to phenolphthalein test the zip bag recovered by P.W.10 was marked as M.O.9. The trap was conducted in the presence of the independent witnesses P.W.4 Chokalingam. There is no motive attributed against P.W.4 to depose falsehood against the accused. It is the definite case of the accused while they were subjected to question under Section 313 of Cr.P.C., in respect of the incriminating circumstances against them, P.W.5-Sathappan had borrowed a sum of Rs.1,500/- from A2 and that while the said loan amount was demanded to be repaid by A2 both P.W.5 and his second wife, a police constable, took a vow that they will take revenge against A2 and accordingly they have foisted this case against A1 and A2. Even if it is true, there is no motive against P.W.5 and his wife to make a false complaint against A1. But according to A1 as D.W.2, A2 had borrowed Rs.1,200/- from him and on 8.3.1991 at about 10.30 pm A2 came to his house to repay the said loan of Rs.1,200/- and at that time Vigilance Police came and seized the amount. But according to P.W.5, A2 had handed over Rs.1,250/- in his presence to A1 on 8.3.1991 and not Rs.1,200/-.

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Under such circumstances, the defence story that A2 had borrowed Rs.1,200/- from A1 and P.W.5 had borrowed Rs.1,500/- from A2 cannot be believed. P.W.3 is a contractor and he had taken a contract building work under Vazhapadi Panchayat Union and that the sum of Rs.26,937/- is the amount due to P.W.3 are all spoken to in detail by P.W.6 & P.W.7. Under such circumstances, I do not find any reason to interfere with the well considered judgment of the learned trial judge in Special C.C.No.54 of 1992 on the file of the Special Judge-cum-Ist Additional District and Sessions Judge-Cum-Chief Judicial Magistrate, Salem.

17(d)The learned trial Judge has convicted the accused under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. As per the ratio decidendi in 2007(1) SCC (Cri 520 (State represented by Inspector of Police Pudukottai,T.N, vs A.Parthiban), even though a conviction under Section 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act is maintainable, there cannot be a sentence under both the sections. The relevant observation in the above said dictum for the purpose of this case runs as follows:-

> "Every acceptance of illegal gratification, whether preceded by a demand or not, would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under Section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different sections, the offender cannot be liable for double penalty. But the High court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(d) is one year. If an offence falls under both sections 7 and 13(1)(d) and the Court wants to award only the minimum punishment, then the punishment would be one year."

I am of the view that the accused in this case are liable to be sentenced under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. Point is answered accordingly.

17(e)At this juncture the learned counsel for the appellants would represent that A1 is now aged 74 years and A2 is having seven children and on that score some leniency may be shown on them while confirming the sentence. But the trial Court itself has given only a minimum sentence. The learned Additional Public Prosecutor relying on (2007)1 SCC(cri)1

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(State of M.P.-vs- Shambhu Dayal Nagar), would contend that the offence of this nature cannot be viewed lightly and in support of this contention, the learned Additional Public Prosecutor relied on an observation of the Honourable Apex Court in the above said dictum which runs as follows:-

> "It is difficult to accept the prayer that a lenient view be taken in this case. The corruption by public servants has become a gigantic problem. It has spread every where. No facet of public activity has been left unaffected by the stink of corruption. It has deep and pervasive impact on the functioning of the entire country. Large-scale corruption retards the nation-building activities and every one has to suffer on that count. Corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post."

18.In fine, the appeal is dismissed confirming the conviction of the trial Court in Special C.C.No.54 of 1992 on the file of the Special Judge-cum-Ist Additional District and Sessions Judge-Cum-Chief Judicial Magistrate, Salem, under Sections 7 & 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. The sentence of six moths RI and a fine of Rs.500/- each under Section 7 of the prevention of Corruption Act passed by the trial Court, is hereby set aside, but the sentence of one year RI and a fine of Rs.1000/- each in default to undergo 2 months RI imposed under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act passed by the trial Court, is hereby confirmed. The learned trial Court is directed to secure the accused and send them to prison to serve the unexpended portion of the sentence. It is represented on behalf of the appellants that they may be permitted to approach the Government under Section 432 of Cr.P.C., for necessary relief. It is open to the appellants herein to approach the government under Section 432 of Cr.P.C., for any leniency as provided by the said provision of law. The accused are entitled to the refund of the fine levied under Section 7 of the Prevent of Corruption Act, 1988, by the trial Court.

Ssv

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To,

1.The Additional District and Sessions Judge
-cum-Chief Judicial Magistrate, Salem.
2.The District and Sessions Judge, Salem
3.The Public Prosecutor, High Court, Madras.
4.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
(Crime No.6/AC/Special/91
+ One cc to M/s U. Jayaraman, Advocate SR 45751
+ One cc to M/s D. Shivakumaran, Advoacate sR 45719
GK (co)
sg 3/8/07 Crl.A.No.453 of 2001

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